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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Illinois-American Water Company	)	
	)	02-0517
Petition for consent and approval of an agreement	)	
with American Water Resources, Inc. an	)	
"Affiliated Interest" under Section 7-101 of the Illinois	)	
Public Utilities Act as, amended.	)	

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**REPLY BRIEF ON REOPENING  
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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JOHN C. FEELEY  
LINDA M. BUELL  
Office of General Counsel  
Illinois Commerce Commission

Counsel for the Staff of the  
Illinois Commerce Commission

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The Staff of the Illinois Commerce Commission (“Staff”) hereby submits its Reply Brief on Reopening in this matter.

## **I. INTRODUCTION**

In addition to Staff, an Initial Brief on Reopening (“IBOR”) was filed by Illinois American Water Company (“IL-AWC”) along with a joint brief filed by the Citizens Utility Board (“CUB”) and the People of the State of Illinois (“AG”).

Staff in this brief will respond to certain arguments made by IL-AWC. Staff’s IBOR extensively addressed the issues in this proceeding; therefore, the absence of a response by Staff in this brief, to any argument made by any of the parties should not in any way be construed as acquiescence in or approval of said argument.

## **II. ARGUMENT**

### ***A. The AA is not in the public interest***

In its IBOR, IL-AWC indicates that the amended agreement for support services (“the AA”) contemplates that IL-AWC will be paid 15% on top of its fully distributed costs for providing services to its affiliate, American Water Resources (“AWR”) in conjunction with AWR’s provision of the Water Line Protection Program (“WLPP”) to IL-AWC’s retail customers. (IL-AWC IBOR p. 9) IL-AWC indicates that it will share half (50%) of the 15% margin with its retail customers. (Ibid.) IL-AWC indicates that the 50% sharing was approved by the Commission in IL-AWC’s rate case, Docket No. 95-0076, with regard to IL-AWC’s sale of

sewage usage data to municipalities. (Ibid.) Staff has recited these factual claims of IL-AWC because they form the basis for Staff's position that the AA is not in the public interest and should be rejected by the Commission.

Staff believes that the AA is not in the public interest because had IL-AWC undertaken the WLPP itself, then ratepayers would have benefited by sharing, at a minimum, 50% of the entire margin generated from the WLPP—not just half of the 15% margin over fully distributed costs. Undoubtedly, 50% of the margin from the WLPP is greater than half of 15% over IL-AWC's fully distributed costs. Thus, had IL-AWC followed the Commission's precedent in Docket No. 95-0076, ratepayers would derive a greater benefit from the provision of the service. Because the services provided by IL-AWC to AWR for the WLPP are closely related to and derived from IL-AWC's provision of utility service, the services are likely to cost IL-AWC very little and thus the 15% margin is likely to be minute. Undoubtedly, IL-AWC could provide the WLPP directly without AWR and it is Staff's opinion that AWR's involvement is intended such that IL-AWC would not otherwise share 50% of the entire margin with ratepayers.

It may help to work through an example to see the potential magnitude of the lost gain for ratepayers. Assume that AWR receives \$48<sup>1</sup> per year from a customer for the provision of the WLPP and the total cost of providing the WLPP (by either AWR or IL-AWC) is \$24 per year, then the margin is \$24 per year per

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<sup>1</sup> IL-AWC claims that it expects the WLPP will cost between \$48-60 per year per customer depending on prevailing labor rates for licensed plumbers in the customer's service area.

customer. If IL-AWC were to provide the WLPP directly then it would share the \$24 margin equally with ratepayers resulting in a \$12 benefit per customer to ratepayers. However, under IL-AWC's proposal, a much smaller amount is shared with ratepayers. Assume that under IL-AWC's proposal that it costs IL-AWC \$1 (one) per customer to provide services to AWR for the WLPP, then IL-AWC will receive \$1 from AWR plus 15% or \$1.15. IL-AWC will share half of \$0.15 with ratepayers under its proposal, or \$0.075.<sup>2</sup> Clearly, \$12 is greater than \$0.075, and the difference is extracted from ratepayers to the benefit of AWR and the utility holding company.

The question then becomes, "can IL-AWC provide the WLPP directly without AWR?" IL-AWC claims that it cannot provide the WLPP directly because it does not employ license plumbers. (IL-AWC IBOR p. 9) However, AWR does not employ license plumbers either and instead contracts for their services under the WLPP. Nothing prevents IL-AWC from contracting with license plumbers in its service areas to perform the repair work contemplated under the WLPP. (ICC Staff Exhibit 2.0 pp. 11-12) In fact, IL-AWC's "argument" that it does not employ license plumbers, is not credible because it is like a person refusing to travel from Chicago to Los Angeles by airplane because that person is not allowed by the commercial airline to pilot the plane. Just as the airline customer can pay for the airline's services to reach their destination, so can IL-AWC pay for the services of

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<sup>2</sup> All numbers in this example are assumed, except for the \$48 per year, because IL-AWC claims that AWR no longer has any economic analysis in its possession that was used to implement the WLPP.

licensed plumbers (via contract work) to perform the repairs contemplated under the WLPP.

IL-AWC claims that it cannot provide the WLPP directly by engaging outside contractors (who are licensed plumbers) because it is not licensed as a service contract provider and its performance of such a program would be in violation of Section 7-102(f) of the Act because IL-AWC would then be guaranteeing the obligations of its customers to maintain their service lines as required by the Company's approved tariff, ICC No. 22, Third Revised Sheet No. 37, Section 8(G). Pursuant to this tariff, the customers have an obligation to maintain their service pipes free from leaks and other defect, at the customer's own expense and risk. Failure to do so can result in termination of service. (IL-AWC IBOR pp. 9-10) This is not persuasive because the utility guarantees the repair work as its own, regardless of who is actually hired to perform the repairs, i.e., the utility's provision of the repair work through the WLPP does not constitute repair work performed on behalf of the customer nor does it change the requirement that the customer maintain their service pipes free from leaks and other defect. The WLPP as an optional program does not replace IL-AWC's tariff requirement, but instead provides another option for the customer to pay for the repairs that may be needed for their service lines. Customers who subscribe to the WLPP are paying for the cost to repair their service lines through monthly or annual premiums. The customer attempts to mitigate risk through the use of the

WLPP but it is still the customer's responsibility to repair their service line and under the WLPP, they have an additional option.

IAWC provides the following quote from the Public Utilities Act ("PUA") in its brief to support its claim that it would be in violation of Section 7-102(f) of the PUA.

(f) No public utility may in any manner, directly or indirectly, guarantee the performance of any contract or other obligation of any other person, firm or corporation whatsoever.

The plain language of the statute and prior Commission precedent does not support IL-AWC's position. Thus, if one accepts the argument by IL-AWC about guaranteeing the customer's work, the argument is not persuasive because IL-AWC fails to realize that with Commission consent and approval Section 7-102(f) is allowed. Section 7-102(A) modifies Section 7-102(f). Section 7-102(A) provides as follows:

(A) Unless the consent and approval of the Commission is first obtained or unless such approval is waived by the Commission or is exempted in accordance with the provisions of this Section or of any other Section of this Act:

\* \* \*

(f) No public utility may in any manner, directly or indirectly, guarantee the performance of any contract or other obligation of any other person, firm or corporation whatsoever. ...

Clearly, when read in its entirety Section 7-102 does allow IL-AWC to perform the WLPP if Commission consent and approval is sought and obtained. See, Commonwealth Edison Company v. Illinois Commerce Commission, 295 Ill. App. 3d 311, 316 (1998). Staff would emphasize that Staff witness Borden never recommended that IL-AWC provide the WLPP directly. Staff merely pointed out

the benefit to IL-AWC if IL-AWC were to provide the service rather than its affiliate. (Staff IBOR, p. 5.)

IL-AWC argues that Mr. Borden did not provide evidence to support his conclusions that IL-AWC could have provided the WLPP directly without AWR and that IL-AWC would benefit from the provision of the WLPP because of regulatory lag in determining rates. (IL-AWC IBOR p. 9) However, Mr. Borden testified why and how IL-AWC could provide the WLPP directly without AWR. (ICC Staff Exhibit 2.0, pp. 11-12, 18-19; ICC Staff IBOR pp. 8-9) Since the only aspects of Staff's testimony that the Company addressed in rebuttal were contracting with licensed plumbers to perform the actual repair work, and regulatory lag, Mr. Borden's testimony regarding the remaining aspects of the WLPP that IL-AWC could provide without AWR is unrebutted. Staff has previously demonstrated the failure of IL-AWC's license plumber argument, so now Staff will address regulatory lag. In principal, Staff believes that IL-AWC would benefit from regulatory lag if they provided the WLPP directly without AWR, but the devil is in the details. It is possible, but Staff believes unlikely, that IL-AWC might not benefit from regulatory lag, and this could be due to the frequency with which IL-AWC files rate cases before the Commission, but the matter should be determined by a review of the estimated versus actual costs and revenues associated with the program over a test year period. Unfortunately, IL-AWC did not provide expected cost and revenue figures



regarding the WLPP so a more definitive conclusion cannot be reached regarding the benefits from regulatory lag.

IL-AWC argues that the issue at hand is improper subsidization of non-utility services by the utility ratepayers. (IL-AWC IBOR, p. 10) Staff believes that improper subsidization by ratepayers of a utility affiliate is the result of the WLPP as proposed under the terms of the AA. Since ratepayers are denied the full benefit that would otherwise accrue to them had IL-AWC provided the service directly, then utility rates are higher than they should otherwise be had IL-AWC acted independently in its provision of the WLPP. When the affiliate extracts the benefit that would otherwise been shared by ratepayers, at a minimum on a 50/50 basis, then utility rates are higher in order to fund the affiliate's business. Such a subsidy is not in the public.

IL-AWC claims that ratepayers must share the risk if they are to receive the benefit of Mr. Borden's above the line treatment and that there is a risk to the program which Staff witness Borden fails to recognize. (IL-AWC IBOR, p. 11) The risk that IL-AWC alludes to is the risk associated with claims being so large such that the Company incurs an economic loss by providing the WLPP directly. The Company's argument is not persuasive because the same risk would also apply to AWR, yet AWR intends to provide the WLPP. Companies continue to provide services like the WLPP and other insurance services if the premiums in total are expected to provide adequate compensation to cover all costs, including

costs incurred through claims. AWR believes that it is worth taking such a risk because the premium is expected to provide adequate compensation. The latter is by no means a guarantee, but if a proper risk assessment of the WLPP is conducted, then the service provider would have a better understanding as to whether the proposed premiums will provide adequate compensation. Staff knows that such an analysis was conducted for the WLPP and it is unfortunate that the analysis was not preserved by AWR because the Commission would find it useful in wading through the Company's specious arguments. In short, the premiums, although not a 100% guarantee--and there are no 100% guarantees for any utility cost recovery-- provide adequate compensation for the risks taken by the Company in its provision of the WLPP. If IL-AWC is implying by its argument that the premiums are inadequate, then AWR is foolish to continue in its provision of the WLPP without higher premiums and IL-AWC would be foolish to provide the WLPP directly without higher premiums.

IL-AWC indicates that its involvement with AWR in the provision of the WLPP is in the public interest because there are aspects of the WLPP that are superior to similar services that are in effect or that have been previously approved by the Commission for other utilities reviewed by Mr. Borden. (IL-AWC IBOR, pp. 11-12) Staff agrees with IL-AWC's comparison of the sharing of benefits under the WLPP versus the similar customer repair services offered by SBC, Verizon, and Nicor Services. Mr. Borden would not support the compensation and sharing of benefits for those programs if he were testifying in

proceedings addressing those programs. Mr. Borden does not believe that much can be done with respect to the SBC service because of the alternative regulation of SBC. Mr. Borden believes that the appropriate Commission Staff should review Verizon's provision of their customer repair service and address it in the appropriate proceeding before the Commission. For the energy industry, Staff is internally reviewing affiliate agreements for each company to identify services that may not be in the public interest and how to proceed once identified.

Staff disagrees with IL-AWC's claim that the introductory letter to customers from IL-AWC is more in the public interest than Nicor allowing its affiliate, Nicor Services, to use utility bill inserts to market its customer owned gas piping repair service. (IL-AWC IBOR, p. 12) Nicor allows any entity access to its bill inserts at the same rates and it does not endorse Nicor Services' gas piping repair service. IL-AWC's "introductory letter" is a ringing endorsement, from the President of IL-AWC, of the virtues of the WLPP. It is clear to Staff that the purpose of the introductory letter is for AWR to capitalize on IL-AWC's brand name and reputation with its customers that has been achieved through decades of providing quality utility service. Staff is disturbed that IL-AWC will actively market the WLPP as beneficial to customers when it simultaneously has not reviewed the WLPP to determine whether it is beneficial to customers. Staff believes that it is not in the public interest for IL-AWC to provide potentially

inaccurate and misleading information to its customers to assist its affiliate in securing business. (ICC Staff Exhibit 2.0, pp. 25-26)

**B. Secondary recommendations.**

Staff witness Borden made the following Secondary Recommendations:

- 1) IL-AWC shall provide the same services, under the same terms and conditions that it provides to AWR, to non-affiliated entities who seek to provide services similar to the WLPP;
- 2) the 15% mark-up over the fully distributed cost that IL-AWC receives, for services provided to AWR, should be increased to the mark-up that IL-AWC receives for the provision of customer account information to municipalities for the purpose of billing for sewer service;
- 3) 100% of the mark-up that IL-AWC receives, regardless of whether the Commission adopts Staff's proposed mark-up or IAWC's 15%, should be treated above the line for ratemaking purposes to the benefit of ratepayers;
- 4) The approval of the AA should be limited to the provision of the WLPP; and,
- 5) The use of IL-AWC's letterhead and IL-AWC's endorsement of the WLPP in letters to customers should be prohibited. (ICC Staff Exhibit 2.0, pp. 20-21)

1) IL-AWC argues that because non-affiliate entities would not be on the American Water computer system, providing the service to non-affiliates would likely be at a greater cost than that for providing services to AWR. (IL-AWC IBOR, p. 15) The latter is a factual matter that must be demonstrated by IL-AWC in the event that they provide such services to unaffiliated entities. As such, the Commission must require that IL-AWC provide the same services at the same

costs to unaffiliated entities and the burden should be left to IL-AWC to demonstrate that the actual costs are different.

2) IL-AWC argues that Mr. Borden's proposed 900% mark-up for the services that IL-AWC provides to AWR is arbitrary, unfair, confiscatory and is likely to result in fewer customers enrolling in the WLPP. (IL-AWC IBOR pp. 15-16) Mr. Borden's 900% mark-up is not arbitrary because it reflects the net-income that IL-AWC receives from unaffiliated entities for the provision of customer account information. Mr. Borden testified that IL-AWC's provision of this customer account information to municipalities is similar to the customer account information that is and can be provided to AWR under the AA and the WLPP. (ICC Staff Exhibit 2.0, pp. 22-23) Thus, the contracts negotiated between IL-AWC and municipalities should serve as a proxy for the mark-up that is applied to IL-AWC's provision of similar services to its affiliate. IL-AWC's proposed 15% mark-up is the same mark-up employed by a utility in another state that is an affiliate of IL-AWC in their provision of services to AWR for the WLPP. It cannot be credibly argued that IL-AWC's 15% mark-up reflects a market price since it results from the same affiliate relationships in other regulatory jurisdictions. Staff does not know whether its proposed 900% mark-up would price the service out of the market, but IL-AWC has responded with assertions versus cost and revenue figures. This is the most troubling aspect of the AA and the WLPP, i.e., when push comes to shove, no cost and revenue figures exist. If new information is available from IL-AWC and AWR, Staff is willing to review the information to determine whether the proposed mark-up is

reasonable in light of that information, but until the Company provides cost and revenue data for the WLPP no legitimate review of the Company's claims can be undertaken.

3) IL-AWC argues that Mr. Borden's recommendation that 100% of the mark-up IL-AWC receives should be treated above the line would create a disincentive for IL-AWC to enter into the program. IL-AWC claims that Mr. Borden justifies this position on the basis that AWR benefits from the joint marketing of the WLPP and thus benefits from the brand name and reputation of IL-AWC. (IL-AWC IBOR, p. 16) IL-AWC offers legal argument as to why it is not appropriate for ratepayers to receive compensation for the use of utility's brand name and good will. (IL-AWC IBOR, pp. 16-17) IL-AWC would not have a disincentive to enter the program because of the likelihood that they would benefit from regulatory lag in setting rates. Regulatory lag is a term to describe the timing differences and the differences between actual and expected cost and revenues in setting rates. For example, rates are set by the Commission based upon test year level revenues and expenses. The actual level of revenues and expenses are almost certainly different than the pro formas employed in the test year. Those differences can work to a company's advantage or disadvantage prior to the next rate proceeding, e.g., if actual customer growth is much larger than the test year level, then this generally is to the benefit of the Company all else constant. In the instant case, Staff does not know the costs or revenues that IL-AWC expects to receive for services provided under the WLPP so the pro

forma figures are not established and existing rates will not reflect the sharing of revenues from the WLPP. The latter is to the benefit of IL-AWC. In the next rate proceeding, revenues and expenses will be adjusted to pro forma figures that will account for the WLPP and the Company will have an opportunity to benefit from the provision of the service depending on whether actual revenues and costs differ from the pro forma figures. Staff concedes that a company that files rate cases with the frequency of IL-AWC is less likely to benefit from regulatory lag, but the Company should present the pro forma cost and revenue data to demonstrate the likelihood.

If the Commission were to adopt IL-AWC's proposed 15% mark-up, Staff's proposed 900% mark-up, or another mark-up that is greater than 15% but less than 900%, it is imperative that the Commission also require 100% sharing of the mark-up with ratepayers. Mr. Borden testified that 100% sharing is appropriate because it will recapture some of the gain that might otherwise have gone to ratepayers had IAWC proposed to offer the WLPP directly. (ICC Staff Exhibit 2.0, p. 23) Unfortunately, IL-AWC has mischaracterized Mr. Borden's testimony on this matter by its citation of ICC Staff Exhibit 2.0, p. 17 and the discussion set forth regarding the joint marketing of the WLPP and the benefit to AWR of using IL-AWC's brand name. Mr. Borden states on pp. 16-17 of his direct testimony:

- Q. Why should customers be given a larger share of the net income from the WLPP than the 50/50 split that the Commission has previously approved regarding non-utility revenues and merger savings?**
- A. It appears to me that IAWC could provide the WLPP directly to customers without AWR, and that one possible reason for AWR's involvement is to share less of the net income from the WLPP with**

**ratepayers, i.e., what could have been a 50/50 split of the entire net income from the WLPP is now a 50/50 split of 15% over IAWC's cost of providing the service. This hardly seems equitable given that the service is closely related to and derived from IAWC's provision of utility service.** For example, AWR benefits from IAWC's use of utility personnel who repair leaks and read meters by avoiding the cost of hiring full-time employees to provide the services for the WLPP. Although IAWC charges the fully distributed cost of providing these services to AWR, such costs are likely to be minute because they are determined primarily by the amount of time the employee spends performing utility work versus the amount of time that they spend providing services for the WLPP. Based upon IAWC's description of these services, it is hard to believe that an IAWC employee would spend any significant time in their provision of services for the WLPP. AWR benefits from the access to and use of customer information that is the result of the provision of utility service without having to employ customer service and administrative employees to acquire and record such information on its own. AWR benefits from avoiding the cost of sending out its own bill to customers for the WLPP. **Finally, AWR benefits from the joint marketing of the WLPP with IAWC and thus benefits from IAWC's brand name and reputation that was built by providing service as a public utility. I do not know the economic value of IAWC's brand name and reputation, but in terms of marketing the AWR name and reputation to utility customers, AWR could not duplicate the value of the IAWC brand name for the WLPP.** (ICC Staff Exhibit 2.0, pp. 16-17, emphasis added)

Mr. Borden uses the joint marketing of the WLPP and the use of IL-AWC's brand name to demonstrate why the service is so closely related to and derived from utility service and why the utility could provide the service itself. In Mr. Borden's opinion, this supports his contention that AWR's involvement in the WLPP is an attempt to extract benefits from ratepayers and re-direct them to AWR. Mr. Borden's proposed 100% sharing of the mark-up is intended to return the benefits to ratepayers and to provide a disincentive to IL-AWC and AWR from usurping those benefits from ratepayers. Given that IL-AWC has mischaracterized Mr. Borden's testimony and erected a straw man in its argument, Staff believes that it is not necessary to respond to IL-AWC's legal arguments regarding the compensation to ratepayers for the use of utility goodwill and brand name.



4) IL-AWC argues that Mr. Borden's recommendation to limit the AA only to the WLPP is a misstatement of the issue and that AWR is not subject to Commission jurisdiction. (IL-AWC IBOR, pp. 17-18) It appears that IL-AWC would have the Commission believe that a determination in this proceeding is a determination for all-time for all services under the WLPP. The AA is an open-ended agreement and the terms and conditions, the nitty gritty details of the services provided there under, are left wide open for AWR to exploit. As stated in Mr. Borden's direct testimony:

...the AA does not identify the services that will be provided under its umbrella terms, and absent the details of such services the Commission should not conclude that the provision of unknown services is in the public interest. In fact, had the WLPP not been identified as part of this petition, and the Commission approved the AA, I believe that the Commission could have unknowingly approved services, such as the WLPP, not in the public interest. Although the Commission's approval of agreements may be warranted for services that are specifically identified, the Commission should reconsider its approach to the approval of general service agreements that do not set forth the details of the services to be provided between the utility and its affiliate. Some of the services intended to be provided under general service agreements should not be approved by the Commission in advance because the Commission may find the specific details of the services objectionable. In addition, conditions in the industry may change over time such that what was once thought to be in the public interest can turn out to be something the Commission would have rejected had it anticipated a greater number of potential services under the general agreements. By approving general service agreements the Commission is saying that all of the services provided under those agreements are in the public interest, and it is not possible for the Commission to reach this conclusion reasonably without knowing all of the intended uses of the agreements and the details of the services provided. (ICC Staff Exhibit 2.0, pp. 24-25)

The Commission should reject the open-ended nature of the AA.

5) IL-AWC claims that Mr. Borden has provided no support for the Commission's authority to prohibit IL-AWC from using its letterhead or endorsement of the WLPP. (IL-AWC IBOR, p. 18) Mr. Borden testified that it is not in the public interest, per Section 7-101 of the Act, for IL-AWC to engage in this activity per the AA. Mr. Borden stated that:

In addition to subsidy concerns, I am concerned about IAWC's endorsement of a service that benefits from IAWC's provision of utility service when it is not known whether the

WLPP provides an economic benefit to customers. Since I have not reviewed the economic analysis of the WLPP, because it is not available from AWR, I do not provide an opinion as to whether the service is likely to be beneficial to customers. I also do not understand how IAWC can endorse a program under such circumstances. As such, I am opposed to the Commission authorizing IAWC's endorsement and marketing of the WLPP, which could be an unnecessary purchase for the vast majority of customers. That is to say, it is not in the public interest for the Commission to authorize IAWC to provide potentially inaccurate or misleading information to customers in its marketing of the WLPP. (ICC Staff Exhibit 2.0, p. 26)

Staff believes that it is in the public interest for the Commission to prevent IL-AWC from using misleading or inaccurate information to persuade its utility customers to participate in the WLPP. Since IL-AWC has not conducted any analysis of the WLPP and cannot legitimately justify its endorsement of the WLPP, then it should remain silent.

***C. The burden of proof is on IL-AWC to demonstrate that the public interest standard of Section 7-101 has been met.***

IAWC argues, "the Commission must approve any contract for service made between a regulated public utility and any affiliated interest, unless it finds that such contract is not in the public interest." IL-AWC IBOR, p. 8. IL-AWC is attempting to shift the burden of proof to Staff and ultimately the Commission rather than keep the burden of proof on itself to establish that the affiliate contract is in the public interest. IL-AWC is the petitioner in this matter. IL-AWC opened and closed consistent with Section 200.570 of the Commission's Rules of Practice. Logically, IL-AWC must bear the burden of proof in showing that its affiliated interest contract is in the public interest. The burden of proof is not on the Commission to find the contract not in the public interest. To suggest otherwise would be illogical and inconsistent with established Commission practice. See, Illinois Power Company, ICC Docket No. 93-0039, Order at 17.

**D. Staff's recommendation that IAWC's agreement be rejected because it is not specific enough is consistent with the law.**

IL-AWC argues that Staff's recommendation that IL-AWC's agreement be rejected because it is not specific enough is inconsistent with administrative law. (IAWC IBOR, pp. 12-13.) While citing a number of cases for various legal principles, IAWC fails to cite the true case on point and its well-stated legal principle. IAWC fails to recognize that the Commission is not a judicial body and its orders do not have the effect of *res judicata*. The Commission, as a regulatory body must have the authority to address each matter before it freely, even if it involves issues identical to a previous case. Mississippi River Fuel Corp. v. Illinois Commerce Commission, 1 Ill 2d 509, 513 (1953). Staff's position in this matter is entirely consistent with Mississippi River Fuel Corp. In this matter, Staff witness Borden pointed out that some of the services intended to be provided under general services agreements should not be approved by the Commission in advance because the Commission may find the specific details of the services objectionable. (Staff IBOR, p. 10.) In addition, conditions in the industry may change over time such that what was once thought to be in the public interest can turn out to be something the Commission would have rejected had it anticipated a greater number of potential services under the general services agreement. (Staff IBOR, pp. 10-11.) Staff witness Borden pointed out that had the WLPP not been identified as part of this petition, and the Commission approved the amended agreement for support services, the Commission could have unknowingly approved services such as the WLPP, that would not be in the public interest. (Staff IBOR, p. 10.)

### III. CONCLUSION

**WHEREFORE**, for the foregoing reasons and those stated in Staff's IBOR, the Staff of the Illinois Commerce Commission respectfully requests the Commission reject the proposed AA as not in the public interest. In the event that the Commission does not reject the AA, then Staff recommends that the Commission adopt Staff's Secondary Recommendations, as described its IBOR.

Respectfully submitted,

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JOHN C. FEELEY  
LINDA M. BUELL

Office of General Counsel  
Illinois Commerce Commission

June 3, 2003

Counsel for the Staff of the  
Illinois Commerce Commission